IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9981 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

FIROJKHAN ALIAS MOGLI ALIAS JAVED JAHIRKHAN PATHAN

Versus

STATE OF GUJARAT

Appearance:

MS BANNA DUTTA for MR AR SHAIKH for Petitioner No. 1

MS MITA PANCHAL AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 24/09/2003

ORAL JUDGEMENT

1. By way of this Special Civil Application, the petitioner has challenged the order dated 10.4.2003 passed by the Police Commissioner, Ahmedabad City, against him, in exercise of powers under Section 3(1) of

the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as "PASA Act") declaring the petitioner to be a "dangerous person" within the meaning of the PASA Act, and directing the detention of the petitioner. In pursuance of the said impugned order in this petition, the petitioner is detained in jail since 10.4.2003.

2. The grounds served upon the petitioner discloses that the detaining authority relied upon two offences registered against the petitioner on 10.3.2003, under Sections 380 and 457 of Indian Penal Code. The detaining authority also relied upon two statements of witnesses, whose identity is not disclosed as per Section 9(2) of the Act and came to be recorded by the proposing authority on 7th & 8th of April, 2003 and verified by the detaining authority on 9.4.2003. The allegation against the petitioner is the petitioner is headstrong person and engaged in illegal activities of house breaking and theft and vehicle theft, picks up quarrel with the citizen who resists the activities of the petitioner and, therefore, due to this activity, the public order is disturbed. After taking into consideration this material, the impugned order came to be passed.

3. Learned Advocate Ms. Banna Dutta for Mr. AR Shaikh for the petitioner and learned AGP Ms. Mita Panchal for the respondents were heard at length. Learned GP has placed on record the affidavit-in-reply of the detaining authority which is also taken into consideration.

4. Though various contentions raised on behalf of the petitioner, and controverted by the AGP, it appears that the matter can be dealt with and disposed of on the ground that whether by the activities of the petitioner the public order came to be disturbed. It is settled law that there is a distinction between the maintenance of public order and maintenance of law and order. So far as the fact of registration of offence against the petitioner is concerned, one can hardly say that by merely registering the said offences, the public order was disturbed. Therefore, the further material available with the detaining authority to come to the conclusion about maintenance of public order are two in-camera statements. These statements refer to the individual quarrels not involving maintenance of public order disturbing the even tempo of life or peace and tranquility of the locality. The incidents narrated are casual, individual disputes, by which it cannot be said that the public order came to be disturbed. The

subjective satisfaction of the detaining authority is vitiated in this respect. The order impugned in this Special Civil Application is required to be quashed on this ground alone.

5. In the result, this Special Civil Application is allowed with no order as to costs. The order impugned in this Special Civil Application passed by the Police Commissioner, Ahmedabad City, on 10.4.2003 under Section 3(1) of the PASA Act against the petitioner is quashed and set aside. Petitioner is directed to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule made absolute.

(J.R. Vora, J.)